

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

United States District Court
Southern District of Texas

ENTERED

October 11, 2017

David J. Bradley, Clerk

JOSE RAUL LARA-ORTIZ
V.
UNITED STATES OF AMERICA

CIVIL NO. B-17-032
CRIMINAL NO. B-15-166-1

ORDER

Pending is the Magistrate Judge's June 21, 2017, Report and Recommendation in the above-referenced cause of action. [Doc. No. 19] No objections have been lodged by either side and the time for doing so has expired. Petitioner has filed a new § 2255 petition which this Court will consider as not only a new petition but also as an objection to the current Report and Recommendation.

Having considered *de novo* the Magistrate Judge’s Report and Recommendation and the issues and objections raised by the petitioner, the Court hereby adopts the Magistrate Judge’s Report and Recommendation. Petitioner Jose Raul Lara-Ortiz’s Motion to Vacate, Set Aside or Correct his Sentence pursuant to 28 U.S.C. § 2255 [Doc. No. 1] is denied as meritless. Petitioner’s second Motion to Vacate, Set Aside or Correct Sentence pursuant to § 2255 [Doc. No. 24] is denied for the reasons set out in the original Report and Recommendation.

The Certificate of Appealability is granted in part and denied in part. The issue as to what factors should be considered in deciding whether a so-called “rational defendant” would want to appeal and whether Lara-Ortiz qualifies as such is one that might merit consideration. The caselaw on this point is sparse and the Court of Appeals may want to consider this issue further. The Certificate of Appealability is denied as to all other claims.

Signed this 11th day of October, 2017.


Andrew S. Hanen
University of Illinois Urbana-Champaign